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The institutional future of Brussels

Discussions based on the “Brussels Manifesto”

*L’avenir institutionnel de Bruxelles. Discussions à partir du
« Manifeste bruxellois »*

*De institutionele toekomst van Brussel. Debat op basis van het
“Brussels Manifest”*

Alain Maskens, Nicolas Lagasse, Jeroen Van Nieuwenhove and Hugues Dumont

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Summary

A number of public policies – from the regional organisation of multilingual education to the development of multicultural activities, with consistent management of the various Community and regional powers in between – have a hard time fitting into Brussels's current framework. The matter of reforming this framework, whether slightly or radically, is thus regularly brought up.

Brussels Studies has chosen to ask the question of Brussels's institutional future based on a widely circulated document that proposes some rather radical solutions, namely, the "Brussels Manifesto" (<http://www.manifestobru.be>). Without delivering a "turnkey" institutional model, its signatories advocate developing a federalism that relies heavily on the regions. A colloquium on the subject was held last 19 March. The proceedings of this colloquium form the backbone of this issue of Brussels Studies, which is published, as usually, in three languages. In a new development, these articles are accompanied by some longer untranslated texts that were supplied by a few of the authors. So, in this issue Alain Maskens, who is the president of the non-profit association Manifesto and co-author of the manifesto itself, engages in a dialogue with two constitutional lawyers: Nicolas Lagasse (FUSL) and Jeroen Van Nieuwenhove (KUL). Hugues Dumont (FUSL – co-author of Issue 10 of Brussels Studies), who is likewise a constitutional lawyer, was given the task of drawing the conclusions of the debate.

Some very different visions of the region's future meet each other in this dialogue. Alain Maskens, as a promoter of the Brussels Manifesto, advocates an intensive form of regionalism that leaves the cultural communities with only the powers of the cultural promotion of their respective languages, excluding education, "personalisable" subject matters, and culture. Secondly, he calls for a re-examination of Brussels's boundaries or, failing that, clear progress towards the creation of an urban community (see moreover Issue 11 of Brussels Studies). The manifesto's signatories make a particularly original proposal in suggesting that the distinction between the borders of the federated entities and those of the linguistic regions truly be taken seriously. If this were done, enlarging the Brussels-Capital Region would then not challenge the monolingual status of the municipalities that do not enjoy "linguistic easements". Thirdly, he brings up the region's chronic under-financing and asks that the region be saved from otherwise unavoidable asphyxiation. Finally, the Brussels Manifesto calls for the creation of bilingual electoral lists on the region's territory. To do this, it advocates putting an end to the candidates' identification by language. Consequences would be both the possibility of creating bilingual lists and the elimination of the guarantees of parliamentary representation given to the Flemish residents of Brussels.

In focusing on the manifesto's authors' goals, i.e., promoting the organisation of bilingual and multicultural cultural activities, developing bilingual education, and waging an effective employment policy, Nicolas Lagasse asks to what extent the proposed solutions fit the bill. At the end of his review it seems to him that these goals would be served better by a reasonable evolution of the current structure than by the far-reaching reforms that the manifesto proposes. In his view, these reforms would be difficult to put into effect. Consequently, he advocates continuing to think in terms of advancing stepwise, building each time on the achievements of the previous step. He even suggests strengthening the communities by removing from the Constitution the clause that limits their actions to the sphere of their own languages. If the wish is to put an end to cultural compartmentalisation in Belgium, he says, everyone must be free to invest in bicultural activities. He even proposes going back on the Saint Quentin agreements that transferred the French-speaking Community's powers to the French-speaking Community Commission (COCOF). In his opinion, refederating the community powers and simply dismantling the COCOF would improve the coordination and consistency of the policies that are implemented.

Jeroen Van Nieuwenhove, for his part, reveals the vagueness of many of the manifesto's proposals as well as the fact that many of them are unacceptable to Flemish political leaders because they either go against compromises for which they paid dearly or collide head-on with their notions of Belgium and the relations amongst the federated entities that make up the country. So, it appears impossible for him to envision changing the region's boundaries to make them coincide with Brussels's economic hinterland. The history of the Flemings' demands is notably that of their request that the same language rules should apply across the territory of each of the different federated entities and the idea of dissociating regional territory from linguistic territory would not, in Van Nieuwenhove's view, be likely to get the support of Flemish political circles. In the same vein, ending the guaranteed representation for Brussels's Flemish residents would, in his view, sever the tie with Flanders, a tie that is one of the last obstacles to separatism.

Finally, in drawing his conclusions, Hugues Dumont wonders about the enforceability of the manifesto's ideas. As he sees it, a series of fundamental proposals in the Brussels Manifesto appear difficult to carry out because they are incompatible with the French political class's concern to conserve a strong tie between Brussels and Wallonia and are totally opposed to the Flemish leaders' ideas. However, that does not mean that one must be fatalistic. And so, Dumont points to five reforms that he believes are possible: doing away with the COCOM to the benefit of the Brussels Region, lifting the prohibition on the communities' subsidising bi- or multicultural activities, transferring the power to legislate in bicultural subject matters of regional or local interest to the Brussels Region, giving this same region the power to organise bilingual education, and, finally, eliminating the COCOF as a federated political entity.

Alain Maskens

The Brussels Manifesto Some new thoughts

Translation: Gabriëlle Leyden

I should like to start by thanking the initiators and organisers of this colloquium for meeting our hope to see "a democratic debate about the future of Brussels" develop. They have also given me the opportunity to share some personal thoughts with you. In no way do these thoughts replace the text of the two Brussels Manifestos (2003¹, 2007²) that the reader is urged to consult on the Manifesto association's website³. I also urge the reader to consult two texts published on the Brussels Studies site in the wings of this colloquium, one on Brussels's public finances and the other analysing the proposals that former Prime Minister Guy Verhofstadt put forward in January⁴. These notes clarify some of the technical aspects of the proposals made by the Manifesto association.

The second manifesto was drafted in the spring of 2007 to reiterate the considerable challenges facing Brussels and in respect of which its institutional division is a huge handicap. Although Brussels is the third richest region in Europe and a great source of jobs, it is hobbled by a disproportionately high unemployment rate and witnessing the development of a two-tiered society, with a split between rich and poor areas and elitist schools and underqualified populations and the gradual formation of ghettos. Squeezed inside a regional border that does not correspond to the actual boundaries of the Brussels area, the city is watching as its affluent residents and dynamic industries gradually move to its Flemish or Walloon outskirts, thereby depriving it of essential income for its redeployment. Indeed, 55% of the 650,000

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¹ <http://www.manifestobru.be/docu/ManifesteFR.pdf> (French version) and <http://www.manifestobru.be/docu/ManifestNL.pdf> (Dutch version)

² http://www.manifestobru.be/manifesto2_short_fr.htm (French version) and http://www.manifestobru.be/manifesto2_short_nl.htm (Dutch version)

³ <http://www.manifestobru.be>

⁴ These two notes were written by Philippe Cattoir.

http://www.brusselsstudies.be/doc/_BruS19_Finances_publicques.pdf (French version)
http://www.brusselsstudies.be/doc/_BruS19_Openbare_financien.pdf (Dutch version)
http://www.brusselsstudies.be/doc/_BruS19_Note_Verhofstadt.pdf (French version)

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jobs that it offers are filled by residents of the neighbouring regions, who take advantage of its infrastructure (roads, hospitals, etc.), but pay their income taxes in their regions of residence.

Solving each of these challenges calls for an integrated strategy and strong political will. This is impossible in a Region where, depending on the subject, matters come under the jurisdiction of the federal government, regional government, Flemish and/or French-speaking Communities, COCOF (Commission of the French-speaking Community), VGC (Commission of the Flemish-speaking Community), COCOM (Joint Community Commission), and 19 municipal governments (or boroughs), and where political formations, like the regional border, are still organised on the basis of the country's linguistic split.

	French speaking Community	OECD average	Flemish Community
PISA score: Maths	490	498	543
PISA score: Reading skills	473	492	499
Proportion of 15 years old pupils with an educational lag	44%	-	23%

Table 1: PISA 2006 survey

The collective failure of our current institutions and policies are especially clear when it comes to the city's problems of education and training, and thus unemployment. According to the last PISA survey (the survey was launched in 2006 and its findings published in 2008), the French-speaking Community is at the bottom of the OECD's scholastic league tables:

What is more, a recent study by Alter-Educ⁵ of the situation in the French-speaking Community of Belgium shows that the problems are more serious, on all fronts, in Brussels than in Wallonia, with higher grade repeat and drop-out rates in particular. Along with the mediocre mastery of French ascertained by the OECD, Brussels's young people are poorly trained in Dutch, although the great majority of jobs in Brussels require knowledge of Dutch. Thirty-five percent of Brussels's young adults (under 25 years of age) are on unemployment. Given the very great inequalities between neighbourhoods, more than 60% of the young people in some neighbourhoods are unemployed.

Correcting this situation requires investing and working concertedly on the services offered to first-generation immigrants, the rehabilitation of underprivileged neighbourhoods, mobility, basic education, sport and socio-cultural activities, vocational

⁵"L'enseignement à Bruxelles – 10 indicateurs" Alter&I, May 2007.

http://www.alteri.be/downloads/animation_evenement/2007_05_30_PowerpointEnsBXL.pdf

training, and job placement policies. However, this is made impossible by the fact that the various powers necessary to achieve this are scattered amongst so many authorities, including some that are outside the region and thus pursuing inevitably divergent policies. Yet such coordination is exactly what the second Manifesto proposes:

“Without contesting the Linguistic Communities’ rights to support specific education in Brussels, we propose that the Brussels Region should have the powers and substantial financial means that will enable it to support, coordinate, even organise on its own education that is well tailored to the training and integration of children and young people of all origins, on the one hand, and dynamic language teaching on the other hand. Moreover, this should be done in coordination with vocational training and its employment, mobility, and urban renewal policies for its underprivileged neighbourhoods.”

	Dutch	French	Fr/Dutch bilinguals	Fr/other bilinguals	Other languages
French list	13.7	46.9	29.0	37.6	33.3
Dutch list	35.1	2.0	9.4	1.7	1.3
Bilingual list + List representing all groups	51.2	51.1	61.6	60.8	65.4

Table 2: Preferences regarding electoral lists (by language group)

Source : Rudi Janssens : Van Brussel Gesproken. Taalgebruik, taalverschuivingen et taalidentiteit in het Brussels Hoofdstedelijk Gewest (Taalbarometer II) : Busselse Thema’s 15, VUB press, 2007, p 141.

The second manifesto also issued a pressing reminder, on the eve of foreseeable clashes between the linguistic communities – clashes that proved even more sorry, mediocre, and drawn-out than we had feared – that many Brussels dwellers did not identify with the current institutional model inherited from the linguistic conflicts of the past century and everything had to be done to ensure that the night-time compromises to come would not reinforce this model.

In actual fact, the majority of Brussels dwellers, regardless of their linguistic affiliations, want to shake off these linguistic blinkers. More than 50% of the people in each language group are in favour of bilingual or even more widely representative political parties in Brussels (Table 2). From 69 to 75% of them, depending on the language group, want bilingual primary education (Table 3). Only 2 and 7% see their future as being affiliated with Flanders and Wallonia, respectively⁶. Finally, belonging to a language community is the first feeling of identity for only a very small percentage of Brussels residents, coming well behind identifying with Belgium, the Region, and, for the French-speakers surveyed, Europe (Table 4). These figures challenge the theses of those who would like to create a French-speaking or a Flemish “na-

⁶ Poll presented in the dailies Le Soir and De Standaard, 24-25 March 2007.

	Dutch	French	Fr/Dutch bilinguals	Fr/other bilinguals	Other languages
Current system	40,8	28,2	23,7	32,6	36,7
Multilingual teaching	59,2	71,4	75,4	65,9	62,3
A single language	-	0,4	0,9	1,4	1,1

Table 3: Preferences regarding language of primary education (by language group)
Source : Rudi Janssens : *op.cit.*, p 82

tion” that would include Brussels. On the contrary, they suggest that regional affiliation is the basis of citizenship and could thus be a legitimate foundation on which policies in Brussels could be built.

In this context, besides the handicap of the fragmentation of powers to deal with the problems of education and unemployment, it is particularly difficult to accept that bilingual education should remain a marginal offering or that cultural or sports projects in Brussels must necessarily belong to one or the other linguistic community to get funding, all the more so as these activities often are not linked to one or the other language (e.g., music, the visual arts, and sports) or indeed are multicultural or multilingual. Consequently, the second Brussels Manifesto proposes the following:

“Culture and education are one of the most powerful levers in the building of a Region. Flanders, which has placed the Community and regional powers under a single authority, has understood this. Brussels and Wallonia must each benefit from the same advantage. Brussels as a Region must have the powers and means to enable it to control its cultural and education policies. This will allow the Region to provide strong support for multicultural and multilingual projects in particular.”

Dutch speakers		French speakers	
1 st choice	Percentage	1 st choice	Percentage
Belgian	38.2	Belgian	45.8
Brussels	24.3	Brussels	21.5
Flemish	16.8	European	13.4
European	9.2	French-speaking	8.2
Municipality	5.8	International	3.6

Table 4: Preferences regarding “feeling of belonging”
Source : Rudi Janssens : *op.cit.*, pp 132-133.

Of course, one might consider improving the coordination of the various bodies that already exist, even dynamising the existing “two-Community” instruments, such as COCOM, for the promotion of intercultural activities. Despite Brussels’s civil society’s efforts, there is reason to doubt that such a development will occur. Can we indeed reasonably hope that political forces and an electoral system organised wholly on the basis of be-

longing to one language will seriously promote common projects beyond the language divide? Can we believe that French-speaking parties that are dominated numerically by politicians from Wallonia who are promoting a French-speaking front or nation and Dutch-speaking parties supported 98% by voters from Flanders will include on their electoral lists in Brussels bilingual candidates wishing to promote bicultural and bi-educational sectors?

That is why, in the wake of the first manifesto and Brussels Residents' Appeal⁷, the second manifesto called yet again for a revamping of regional political structures as follows:

"In the overwhelming majority of Federal States, parties are organised on a regional (thus territorial) basis and federated at the national level. For known historical reasons, the parties in Belgium are organised on the basis of language. What is more, they are not federated on the national level. Finally, the voting districts separate the citizens on a primarily linguistic basis. Such a construction is not representative of reality in Brussels and does not correspond to the people's demands. This Second Manifesto urges the political forces of Brussels to organise themselves once again without reference to language distinctions. We propose that appropriate electoral mechanisms should henceforward make it possible to take account of bilingual regional parties in Brussels for regional and federal elections."

In this context, we may wonder at the proposals that Nicolas Lagasse broached at this colloquium, that is, to confirm and legalise each of the two language communities' role in promoting bicultural events! This desire to reinforce the Communities' weight is based on a singular conception of Brussels society, to wit: The historical presence of Dutch and French in Brussels allegedly reflects the existence of two culturally different societies to the point where they must have their own political structures to govern separate networks in education, the arts, health care, etc., and also to the point where the existence of linguistically neutral or multiple political structures and networks must be refused. I think that such a vision corresponds neither to historical reality nor to current reality, nor even to Brussels society's plans. Worse, it strengthens the position of those who would like to implement the principle of sub-nationalities in Brussels.

Whilst it is clear that language is an important vector of culture, it is not the only one. The culture that unites citizens around a common plan of life obviously goes well beyond the sphere of language only. What is more, a "culture", a society can express itself or function in several languages, just as several "cultures" or societies can use the same language. Should we not prefer Jorge Semprun's position – "En fin de compte, ma patrie n'est pas la langue... ma patrie c'est le langage"⁸ – to a concept of nationalism based on language?

Consequently, the manifesto states quite clearly:

"It is not a matter of preventing a rich Flemish or French-speaking – or even a German-speaking – cultural presence in Brussels. However, this must not be done to the detriment of the possibility of building the Region's own cultural edifice."

⁷ <http://www.bruxsel.org/?q=en/appeal>

⁸ Jorge Semprun: *Mal et modernité*, 1995

In fact, the Brussels Manifesto does not call for the end of the Communities. Nevertheless, in proposing to return such tools of development and internal solidarity as culture, education, and “personalisable” matters to the Regions, it creates the prospect of Communities that are streamlined but refocused on their true dimension, namely, the cultural promotion of a language to benefit everyone.

Similarly, the transfer of community powers to the Regions does not at all jeopardise measures in favour of the use of Dutch in Brussels. The latter derive from the definition of the country’s linguistic territories and laws on language use, that is to say, the federal government, which guarantees these provisions. The Manifesto does not challenge these principles. If Cultural Community powers are transferred to the Region new protective measures will nevertheless have to be instated, for example, a sufficient quota of purely Dutch or purely French-speaking schools will have to be guaranteed in Brussels if such schools appear necessary for the people concerned.

Ultimately, such a model would do no more than use three basic instruments of Belgian federalism already foreseen by our Constitution⁹, but restored to their right places to be able to use them to best advantage. These are:

the Region, that is, the basic territorial entity of the country’s administrative and political organisation and the place that takes in and allow all the people who reside on its territory to participate as citizens;

the linguistic territory and language laws, which are overseen by the federal level and serve as tools to protect the country’s three official languages from internal competition and external pressure; and

the Cultural Community, which is a tool for promoting our national languages and an interpersonal link between all those who claim to belong to one or the other language group.

To my mind, these are the foundations on which it would be fair and useful to rethink Brussels’s institutions.

⁹ Belgian Constitution:

Art. 2 Belgium comprises three communities: the French-speaking Community, Flemish Community, and German-speaking Community.

Art. 3 Belgium comprises three regions: the Walloon Region, Flemish Region, and Brussels Region.

Art. 4 Belgium comprises four linguistic regions: the French-language region, Dutch-language Region, bilingual Brussels-Capital Region, and German-language Region. Each municipality in the Kingdom belongs to one of these linguistic regions.



Nicolas Lagasse

What future for Brussels's institutions? ¹⁰

Translation: Gabrielle Leyden

Introduction

The Brussels Manifesto has three objectives: the promotion of bicultural and multi-cultural activities centred on the region, education more open to multilingualism, and a more effective employment policy. Astonishingly, it proposes no institutional model. It limits itself to advocating the simplification of Brussels's institutions and development of a federalism that focuses more on the Regions than on the Communities. However, a model that could simplify the institutions does exist. It is based on the existence of three Regions and three Communities and proposes linking the advantages of these different types of institution. This model should not be mistaken for a form of pre-existing institutional status quo, provided that institutions within the French-speaking area are totally overhauled in order to put an end to the fragmentation of decision-making centres so that the Walloons and French-speaking residents of Brussels manage the French-speaking Community together.

To what extent would the two proposals meet the three objectives set by the Brussels Manifesto? More specifically, how would Brussels's institutions be organised and what institutional links would unite Brussels dwellers to the Walloon and Flemings (of Flanders) if the manifesto's proposals were implemented? These are the subjects of Sections I and II below.

I. How would Brussels's institutions be organised?

The Brussels Manifesto advocates highly regionalised Community powers. Now, these powers have already been partly regionalised in the Brussels Region, for the Joint Community Commission or COCOM (also known as the CCC) manages the bi-Community matters that are circumscribed within local interests. COCOM's creation was politically possible only to the extent that the special law on Brussels institutions rendered a certain number of guarantees for the Flemish minority "immutable".

¹⁰ A long version of this text can be downloaded at:
http://www.brusselsstudies.be/doc/_BruS19FR_Lagasse.pdf

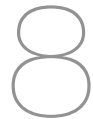
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So, the bilingual Brussels Region already has a series of mechanisms to support the cultural activities that unite its residents, i.e., the equivalent of a Brussels Ministry of Culture. Similarly, the institutional tools for creating bilingual education in Brussels also exist. After a score of years in existence, however, we must acknowledge that COCOM often falls short of the mark when it comes to wielding its powers. The Communities tend much more to be vectors of policies of a bi- or multicultural nature: In exercising their powers, they develop jointly (cofinancing of events, etc.) or separately (organising and financing an athletics centre, etc.) policies that are likely to concern people without regard for their cultural affiliations.

These failings on the part of COCOM appear to derive from the two linguistic and cultural communities' lack of trust in this form of institutional cooperation. Constructive cooperation between the communities is contingent on institutional recognition of their respective differences. This is something that COCOM does not seem to provide, for the Flemish and French-speaking parties alike seem to fear that it will serve the interests and representation of the other community too advantageously.

There is no sign that this rationale, which prevailed during the creation of Brussels's institutions, will be abandoned and such mistrust can be transcended. Whilst Brussels policies that are common to the two language communities can be waged when it comes to strictly regional matters, provided that the minority is given special guarantees, this is more difficult in areas of jurisdiction that participate more directly in the definition of the citizen's personality and through which the people define themselves.

1.1. The regionalisation model

Under the Brussels Manifesto, the bulk of the Communities' powers in Brussels would be transferred to an institution specific to Brussels's residents, such as the Region. The fundamental difference with COCOM would lie in the fact that the Region's institutions would be composed without reference to the French and Dutch language groups. Under this model, all the existing guarantees that the Flemish minority enjoys in both COCOM and the current regional institutions would be erased. The manifesto raises a number of questions about how the institutions would function, their natures and their compositions.

1. How could recognition of the minority's or minorities' differences be ensured and what protection would they enjoy?

Does a Brussels culture exist? If it does, what are its tangible elements? If it does not, are there several cultures in Brussels? Even if we reject the importance of giving a society a common cultural reference for its inhabitants, we cannot ignore the fact that the protection of minorities is an essential given that the Council of Europe imposes on its Member States. If the Flemish minority's currently recognised guarantees are abolished, how will this minority be protected? How will Flemish culture be able to express itself better than in the current institutional framework? If other minorities exist, what are they and how will they be protected? In actual practice, three hypotheses must be avoided:

All references to the protection of a minority are ignored and the current guarantees are challenged.

If this tack were taken, our institutions would be violating the essential principles regarding the protection of minorities that are enshrined in European law and Brussels's institutions would work to the benefit of the majority alone. The result would be the reproduction, on the scale of Brussels, of the unitary Belgium of 1831, in which the dominant culture of the time was the main voice heard.

Beyond these purely legal considerations, might we not run the risk of promoting a retaliatory surge of demands for new guarantees such as the introduction of sub-nationalities in Brussels that would be more like to divide than to unite Brussels's residents?

Guarantees are reserved for the Flemish minority, along the lines of what currently exists within COCOM.

In such an eventuality, would not the Region suffer from the same evils as today's COCOM? How would the regional institutions be able to exercise the Communities' powers jointly without being plagued by the paralysing, lame compromises that characterised Belgium before its federalisation (waffle iron theory) and COCOM?

Guarantees are recognised for various minorities, to be defined.

In this case, do we not run the risk of having each ethnic group turn into an institutionalised Community and withdraw behind the walls of its identity?

In all three cases, the regional institution would be in internal turmoil and decried on the outside and likely to be sacrificed on the altar of a subsequent institutional reform.

2. Why should the Region be the reference area for exercising Community powers?

If the territory is the unique link amongst citizens, why should the Brussels Region be the right level for exercising the bulk of Community powers? The region does not have its own history. Might not the municipalities (boroughs) that make it up exercise the bulk of these Community powers? What is more, a canal cuts through the middle of the region. Might not the emergence of two regions be more justified from a purely territorial standpoint?

1.2. *The model that relies on the existence of three Regions and three Communities*

Under this model, the French-speaking Community would be run jointly by the Walloon Region and French-speakers of Brussels. This model has two advantages, as follows:

This model allows for the fact that, unlike most States and cities in the world, Brussels has two cultures, and it allows them to co-exist peacefully and complementarily. Concretely, Brussels's residents would manage regional affairs through joint institutions, provided that guarantees were given to the Flemish minority. They would manage powers linked to language and culture (in the broad sense) separately, via the Communities.

Regardless of this richness compared with other cities, shall we regret that this model allows for two cultures only? Not so, in my opinion, for it will also make it possible to allow for the region's multiculturalism. It is indeed significant to point out,

for example, that “foreign communities” are widely represented in the organisations, political assemblies, and various governments. This attests to the very great cultural permeability that the institutional structures allow. Just as in other “multicultural” cities, Brussels dwellers do not all have the same mother tongue but the overwhelming majority share the French and/or Dutch language and, beyond language, culture. Allowing for diversity comes all the easier when residents share common points of reference. We must distinguish clearly between the various possible ambitions for Brussels: Is it a matter of giving the region the status of an international city or, on the contrary, implementing a project designed by its own residents? Lacking a common cultural approach, around what references would the people build their city (take the example of Babel)?

As we saw previously, we cannot be certain that the regionalisation proposals will safeguard these achievements. Regionalising only those matters that can be linked to the person raises the same questions. This is compounded by the fact that it does not allow the synchronisation of decision-making centres and thus does not foster the necessary interactions between different jurisdictions.

On the contrary, the Communities’ roles could be expanded. The relevance of Paragraph 2 of the Constitution’s Article 127 might be re-examined. Amongst other proposals, why not endow the Communities with effective institutional tools likely to enable them to act, together or separately, to benefit institutions or events that do not come under either one’s sole jurisdiction? The exclusivity requirement enshrined in the Constitution would have to be abolished. This institutional change would make it possible to expand the current exchanges of teachers between French-speaking and Flemish schools, for example.

Managing and financing the bicultural institutions would have to continue to come under the federal authorities’ jurisdiction, however, because of their federal and international influences.

II. The Brussels population’s links with Wallonia and Flanders

The people of Brussels and their institutions have many interactions (social interactions, economic interactions, etc.) with Wallonia and Flanders. How can these ties be preserved?

2.1. The regional model

This model asks three questions, as follows:

It is necessary to re-centre the places of decision-making, but Brussels’s economic development cannot be seen on the scale of the Region alone. Synergies must thus be forged between institutions so as to raise such initiatives to another level. How, then should this cooperation be organised? The limits of the conventional path (cooperation agreements, etc.) were fully revealed following the Saint Quentin Agreements (regionalising Community powers). The authors of the Brussels Manifesto advocate the same solution, but without explaining how to avoid its pitfalls. The other path, the institutional one (identical composition of decision-making bodies and/or reduction in the number of institutions) has already proven its merits in Flan-

ders as well as on the French-speaking side when it was adopted (see the rapprochement of the French-speaking institutions in charge of international relations).

The Saint Quentin Agreements fragmented the French-speakers' living space legally to the point where they were the source of aberrations and practical difficulties in the people's daily lives. How can these pitfalls be avoided?

Why should the diversity of Brussels's residents be put forward as an asset and the diversity between French-speakers and Flemings a source of further divisions?

2.2. The model that rests upon the existence of three Regions and three Communities

More and more voices are clamouring for an end to the Saint Quentin Agreements. The reunification of the subject matters under the French-speaking Community's jurisdiction would be a first step towards better management. In a subsequent phase, the wielding of cultural community and regional powers would gain in unity and consistency if these powers were put under the control of a single government (one administration and one budget) and a single parliament, so that the Walloon Region and French-speakers of Brussels would run the French-speaking Community together. This movement, which would include the disappearance of the French-speaking Cooperation Commission (COCOF), has several advantages:

It would simplify the country's French-speaking and Brussels institutions.

The institutions would interact more and thus be more effective and efficient. Employment, education, vocational training, and other policies become more consistent and effective when the regulations governing them cover the widest possible area.

The reform would allow synergisms and economies of scale (a single French-speaking administration) likely to release monies to fund new policies, especially in Brussels.

The Community Commissions' drawing rights in the regional budget would eventually disappear.

This reform could be accompanied by thinking about ways to grant the Communities true powers of taxation.

Conclusions

The Brussels Manifesto raises more questions than it answers. After twenty years of institutional reforms marked by failed attempts to regionalise Community powers (e.g., COCOM and Saint Quentin Agreements), it suggests stepping up this movement without explaining how to avoid the pitfalls that justify the quasi-unanimous criticism of these experiences that is heard today. Yet not answering these questions beforehand would be detrimental for the people and survival of the Brussels Region. On the other hand, the possibility that the challenges singled out by the Manifesto could be met in the current institutional structure founded on the existence of Regions and Communities cannot be ruled out.



Jeroen Van Nieuwenhove

A few notes in the margin of the second Brussels Manifest and its vision on the Belgian federal model

Translation: AdK

Introduction

1. The initiators of the second Brussels Manifest want to encourage a discussion about the institutions of Brussels and about the question who should have which authority in Brussels. The propositions of the manifest will be discussed one by one in this contribution.

Proposition 1: Equal treatment of Brussels Capital Region

2. Because Flemish people were more in favour of a community-based federalism, than of a region-based federalism, and because of their bad experiences with the conglomerate council elections (agglomeratieraadsverkiezingen) of 1970, the regional institutions in Brussels were not set up until 1989, after the Flemish inhabitants had been given a number of significant guarantees, as part of a broader compromise, to protect their demographic minority position. The compromise contained some restrictions for the institutions of Brussels as compared to those of the other regions, such as in relation to the statute of ordinances (art. 9 BWBI) and in relation to the so-called review of ordinances (art. 45 BWBI). Neither did Brussels Capital Region get constitutional autonomy in 1993 as opposed to the three “large” federated entities. The practical significance of these restrictions has to be put into perspective, though. However, the question may arise whether the mistrust with regard to the institutions of Brussels is still justified and whether a number of these restrictions compared to the other areas could not be abolished.

On the other hand, the institutions of Brussels also exercise the conglomerate powers and a number of provincial powers. Moreover, the Community Commissions

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derived from those regional institutions exercise major powers of the Communities, which makes Brussels Capital Region rather a “super region” in certain perspectives than a region subordinated to the two other regions.

3. All this does not alter the fact that the Community level is an essential aspect of the federal state structure for the Flemish people, and that this will remain unchanged in the future. The concept of the Community makes it possible to act with one single institution both in the bilingual area Brussels Capital and in the Flemish Region. Flemish people have paid a major political price for that link in 1970 and in 1989. Flemish people wanted to pay that price because they feel the relation between Flemish people in Brussels and other Flemish people is very important. The slogan “Flanders does not let go of Brussels” expresses a fundamental institutional policy option of the Flemish people. It is not an annexation slogan, but a fundamental and legitimate Flemish policy option.

The organisation of the institutions of Brussels is unique in that they are very much in line with the divergent views of the Dutch-speaking and French-speaking people on the federal state structure, in which the individuality of the regional institutions in Brussels can simultaneously be addressed. The institutions of Brussels are compatible with the community model which is mainly emphasised on the Flemish side, but also with the regional model which largely prevails on the French-speaking side (even though there is an ongoing discussion among the French-speaking people on that matter).

The call in the manifest to “leave a Belgium where two communities are on opposite sides behind for good” goes against this basic given. One can defend the singularity of the institutions of Brussels and propose that it be reinforced by proceeding to an entirely regional model, but one also needs to understand that this aim can, at least in structural terms, not be reconciled with the Flemish institutional policy options. Therefore, the demand to reduce or even stop the intervention of the Flemish Community in the bilingual area Brussels Capital is unrealistic. Anyhow, one can hardly blame Flemish people for not wanting to accept the regional state model and in the same breath propose to abolish the community state model.

4. It is not so clear what the manifest means by the same protection as the two other regions. It probably refers to the representation of Brussels Capital Region in the federal parliament. This representation may be feasible for the Chamber of Deputies by means of a separate electoral district, just like the German Community demands. For the Senate, a minimum representation already exists (article 67 § 2 GW), as opposed to the two other regions. Of course that representation is not of the same nature as the representation offered to the communities by means of the Community senators. For the amendment of the special majority laws a majority is required in both language groups and no separate majority requirement exists for Brussels members of parliament. Both the representation in the Senate and the amendment of the special majority requirements would probably lead to a curtailment of the Flemish impact on institutional decision-making. To a certain extent such a curtailment may be intrinsic to a (con)federal state structure, but when it leads to diminishing the demographic majority position of Flemish people to a minority position versus a French-speaking majority position, it is understandable that Flemish people find this idea difficult to agree with.

Proposition 2: Authority and resources concerning education and employment

5. It is difficult to derive from the manifest whether the idea is to replace the existing community provisions by the proposed educational initiatives. That is probably not the case, but the development of regional educational initiatives supposes in any case an amendment of the articles 39 and 127 of the Constitution.

However, it is not very clear which educational project the authors of the manifest have in mind. An education which is structurally aimed at teaching the two languages is a very appealing thought, but the question is who will use this type of education in practice. There is a danger that mainly socially well-off groups of the population will use it, while the deprived segments of the population and immigrants will mainly continue to go to French Community schools. Therefore, we have to ask whether the development of additional bilingual regional education will lead to more opportunities in education and employment for these sections of the population. This cannot be achieved by an additional high-quality bilingual education circuit, but requires an improvement of the content-related quality of the existing schools in Brussels.

6. The question is also where the Brussels Capital Region is going to find the financial means to accomplish its substantial ambitions of bilingual education. Logically, resources of the Communities would have to be used, but it is rather doubtful that they will agree to that, unless maybe when they get their say in that bilingual education, which would in fact not be an unreasonable demand after all.

7. A better cooperation between the two communities about the organisation of education in Brussels would undoubtedly be highly appreciated. The recent initiatives of a teacher exchange program are a first step, but further cooperation is important to anticipate specific problems in terms of language command and employment in the context of Brussels. By means of a more intense cooperation, the quality and bilingualism of the schools in Brussels can significantly be improved while not requiring a revision of the constitution.

Proposition 3: Authority on multicultural matters

8. As far as the exercise of the cultural authority by Brussels Capital Region is concerned, the same legal and other objections can be raised as for the educational initiatives above.

In terms of content, the concept is even less clear than for bilingual education. What are multicultural initiatives? Does Brussels cultural identity even exist? There are undoubtedly cultural initiatives which go beyond one Community and therefore deserve an adequate reference framework and support. The question is, however, whether the two Communities are not doing enough and whether Brussels Capital Region could do better.

As for the first question, you can still be of the opinion that "Community-transcending" cultural initiatives are rare and should be promoted more than the Communities are doing now. But whether the Brussels Capital Region, based on its

nature, can be viewed as a better governing body than the two Communities, is rather doubtful.

All the same, the cooperation between the communities can be improved in this sense and we may have to consider granting the Joint Community Commission ("Gemeenschappelijke Gemeenschapscommissie") the bicultural competencies which are currently exercised by the federal government. This may give some dynamism to the development of "Community-transcending" initiatives, but in that case it also raises the question of funding.

Proposition 4: Better funding

9. Just like the other federate entities, the Brussels Capital Region has a funding mechanism which is actually nothing more than a spruced-up endowment system. Besides a limited number of fiscal powers, financial resources are granted to the regions on the basis of portions of federal tax incomes.

The evolution of the state reform has also resulted in "buying off" further transfers of powers with substantial transfers of financial means from the federal government to the federated entities. After several "one shots", "refinancing" and other creative cash flows, the net result is that Flanders enjoys a relative budgetary wealth and the federal government is doing worse and worse. This is disturbing, because the federal government is responsible for a healthy and just social security, among other things.

As far as the Brussels Capital Region is concerned, the analysis in the manifest is partially true. A major city has specific expenses and the criterion for collecting personal income tax combined with the principle of "just return" leads to results that are detrimental to the Brussels Capital Region. But these disadvantages have also been partially compensated by a number of mechanisms in the financing legislation which granted additional means to Brussels Capital Region (the bonus for appointing Flemish aldermen, the solidarity mechanism, the Beliris fund, the financing of the function as the capital, ...). Besides the "huge expenses" of the international and capital city function, there are also significant benefits.

Furthermore, false arguments should not be used in this discussion: e.g. the consumption of healthcare by patients from outside the Region is almost exclusively a concern of the federal government (hospital budget and healthcare insurance), the Common Community Commission (OCMW hospitals) and, to a lesser extent, of the communities. The Region does not bear any significant costs in this respect.

Proposition 5: Integration between Region and hinterland

10. The need for a more intense cooperation between the regions in the field of mobility, town and country planning and the environment can only be affirmed. The Brussels Capital Region and its surrounding areas are one economic web that requires a coordinated and consulted approach of policy initiatives between the regions and the federal government.

The extension of the regional boundaries does not seem to be an adequate measure in that respect. If one wants to achieve a proper integration between Brussels Capital Region and the so-called economic hinterland, the entire former province of Brabant would have to be included in Brussels Capital Region, because that is how far the economic hinterland of Brussels goes. Such an extension however, does not seem to be a very realistic line of thought, only more so because the idea of a better integration can also be achieved in a less drastic way.

Proposition 6: Bilingual regional parties

11. Electoral districts do not divide voters on the basis of their language. The language division is the result of the language border, the division in linguistic areas and language groups and the territoriality principle. But the former unitary Belgian political parties did not fall apart along a language line, simply because electoral districts, language borders or language groups were created at a certain moment. It is a more fundamental political process which has made Dutch-speakers and French-speakers want to contend for the voter's favour separately. That fundamental political fact cannot be undone just like that.

In terms of the institutions of Brussels, the strict division in speakers of Dutch and speakers of French and the fixed distribution of seats is somewhat regrettable. This arrangement strongly emphasises the twofold aspect of the institutions of Brussels, while the political reality is much more complex. The deep distrust between Dutch-speaking and French-speaking politicians will probably make it impossible to put an end to that system.

Proposition 7: A convention with politicians and with the social midfield

12. The mistrust (almost contempt) which is reflected in the manifest towards "some policy-makers" does not detract from the fact that no state reform has been accomplished in a convention yet. Every alternative is welcome to promote say and consultation in the development of institutional innovations, but a convention does not seem to be the most indicated manner to deal with "multiple and complex" problems, as the manifest itself puts it.

IV.

Hugues Dumont

Summary and conclusions

Translation: Gabrielle Leyden

The “Brussels Manifesto” of March 2007 and commentary by Alain Maskens at the colloquium of 19 March 2008 have put forward a host of extremely interesting and stimulating proposals. Given the limits allotted to me, I shall focus on five of them that are particularly important and the objections that Jeroen Van Nieuwenhove and/or Nicolas Lagasse has raised to each one of them in turn.

1) First of all, the authors of the Brussels Manifesto have a dream that can be summed up quite simply as follows: If *the Belgian institutional arrangement* rested upon only the three Regions – the Flemish, Walloon, and Dutch Regions – instead of on the two main Flemish and French-speaking Communities, everything would be better, both for the people of Brussels and Belgian federalism as a whole. If we assume that this is true, Jeroen Van Nieuwenhove’s reaction clearly echoes the traditional objection against which this dream bumps up on the Flemish side of the line. Setting up a federalism based exclusively on the three Regions, he said, would cut the link between the Flemings of the Flemish Region and the Flemings of Brussels, whereas this link has always been deemed vital by all of the country’s Flemings. Nicolas Lagasse also recalled this fundamental political given that has been so well known since 1970. If truth were told, it is the source of all the originality but also the complexity of Belgian federalism, that is to say, the superimposition of the community and regional layers.

The manifesto’s authors could nevertheless retort that the community level today is contested more and more from various sides and thus the community-region duality that typifies our federalism is not necessarily immutable. We can discern four signs of this growing contestation.

The first one is marginal but worth drawing attention to: Some Flemish separatists seem to be ready to give up Brussels in order to facilitate the fulfilment of their own dream. The Flemish Community would then be able to fall back upon its single Flemish regional component and accelerate the process of its transition to statehood.

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The second sign is at the opposite end of the scale from this separatist minority: Some political figures representative of Brussels's Flemish residents are willing to have a few subject matters currently managed by the Flemish Community shift to the regions and, consequently, the Brussels Region, even though the latter is dominated by French-speakers. One major political event in this connection that strangely went unseen took place on 25 January 2008. It was the consensus that the Brussels government reached, beyond its French/Flemish dividing line, when it was given a hearing before the so-called "Octopus" group set up under the chairmanship of the Prime Minister-designate Yves Leterme to prepare the next round of institutional reforms. At this hearing, the Brussels government asked for the regionalisation of two Community powers¹¹, namely, tourism and sports infrastructure. On the other hand, there was no consensus on asking for the regionalisation of vocational training as well, but "some members of the Brussels Government" had the fact that they requested such a regionalisation as well written into the minutes. The situation was thus very far from one of challenging the Communities' existence and powers to act in Brussels, but for the first time in many years official voices were heard from the Flemish benches supporting a request to reshape the country's regional and community powers.

The third sign is the ongoing debates within the Wallonia-Brussels Commission that have given the Walloon "regionalists" an opportunity to remind everyone that they have been calling for an end to the French-speaking Community and the transfer of its powers, especially its responsibilities for education and culture, to the Walloon Region since their 1983 "Manifesto for Walloon Culture".

Finally, the fourth and last sign to date – the event occurred after the March 19th colloquium, but must not be skipped in this assessment – is the "biregional plea" that the Ministers and Regional Presidents Rudy Demotte and Charles Picqué delivered to the press on 17 April 2008 and was favourably received by the daily *Le Soir*¹², giving us reason to believe that the French-speaking Socialist Party rallied to a regionalist preferential option, even though this option is still very ambiguous and in any case vague about the powers that it nevertheless intends to keep within the confines of the "revamped" French-speaking Community.

These signs will surely be considered to be in favour of the regionalist thesis of the Brussels Manifesto and likely to fuel hopes that the Flemish plea of non-admissibility that Jeroen Van Nieuwenhove recalled will not be the last word in the matter. If we take a closer look, however, we are forced to acknowledge that they are not at all convergent. Even if they do not express themselves clearly on this point, it does indeed seem that the dream of the Brussels Manifesto's initiators is to see the Brussels Region occupy a third spot alongside its two neighbours. Unlike Ministers and Regional Presidents Demotte and Picqué, they are not pleading for a "Wallonia-

¹¹ The "transfer of the residual power exercised by the federal authority in Brussels in the area of cable television and bilingual radio broadcasting activities" was also requested. See the (unpublished to my knowledge) document of the Government of the Brussels-Capital Region entitled *Investir dans le développement national et international de Bruxelles : une ambition au profit de tous*, 25-01-2008, pp. 4ff.

¹² See H. DANZE's editorial in *Le Soir* of 9 April 2008, p. 20, and H. DANZE and V. LAMQUIN's article in *Le Soir* of 17 April 2008, p. 3.

Brussels Federation”, but for an autonomous Brussels Region that would hold its own against the Flemish and Walloon Regions. Unlike the Flemish members of the Brussels Executive who are most open to the regionalisation of some Community areas of jurisdiction such as tourism and sports infrastructure, Alain Maskens and his friends want to regionalise the greatest part of the subject matters under Community jurisdiction, starting with education. The Brussels Manifesto’s institutional options thus remain doubly marginal. They are marginal on the one hand because of the consensus of the French-speaking political leaders of Belgium who want to remain united – and want this unity today more than ever, given the coming summer’s political agenda – against Flemish demands, whether this unity be achieved via the French-speaking Community or a “Wallonia-Brussels Federation”. And they are marginal on the other hand because of the Flemish consensus in favour of maintaining the Flemish Community’s power to act independently in Brussels in areas as strategic as education.

2) The Brussels Manifesto’s authors put forward a less unrealistic proposal regarding *the Brussels Region’s territorial limits*, at least if we look at the watered-down version. The more adamant proposal aims to dissociate the boundary of the Brussels Region as a federated political entity¹³ on the one hand from the boundary of the bilingual Brussels-Capital Region as a linguistic region¹⁴ on the other hand. Informed of the Flemish fear of a French-speaking ripple effect that would threaten the Flemish Region’s linguistic identity if the second border were shifted, Alain Maskens pleaded for renegotiating over the first border (i.e., the regional one) without touching the second border (i.e., the linguistic one). This idea is intellectually attractive. However, it is at loggerheads with the Flemish struggle that has never ceased to ensure that these two borders, which date back to 1980-89 and 1923-63, respectively, coincide perfectly with each other, to the nearest metre. So, Jeroen van Nieuwenhove did not even take the trouble to envision the hypothesis. He simply reminded his audience that extending Brussels’s limits, understood implicitly as both a “Region” and a “linguistic region”, was an unrealistic avenue.

There then remains the watered-down version of the proposal, around which a consensus appears to be discernable this time around. This is the idea of an “urban community” based on a cooperation agreement amongst the three regions that would allow better functional integration between the Brussels Region’s territory and its Brabant periphery. We could only rejoice over this prospect, if the summer’s negotiations confirm its political practicability¹⁵.

3) The Brussels Manifesto relays a third proposal made quite a while ago by economists who studied *the Brussels Region’s public financing system*, as follows: It is high time to correct what must indeed be called structural under-financing of the region. Unfortunately for the residents of Brussels, we were forced to ascertain dur-

¹³ See Articles 3, 5, and 39 of the Constitution and Art. 2 of the Special Act of 12 January 1989.

¹⁴ See Art. 4 of the Constitution and Art. 6 of the coordinated laws on language use in administrative affairs.

¹⁵ The aforementioned document of the Brussels Government of 25 January 2008 shows that its members were split on this, with some calling for the region’s enlargement and others for setting up an Urban Community.

ing our debates that an expert in public affairs as informed as Jeroen Van Nieuwenhove was still not convinced of the reality of the phenomenon and, consequently, the urgent need to correct it. It seemed to him that further, more objective, studies were required to make a diagnosis. When you know the number and quality of the studies that already exist and the fact that the Flemish Ministers of the Brussels Government are on the same wavelength in this regard as their French-speaking colleagues¹⁶, you wonder to what kind of expertise we shall have to turn in order to overcome these strangely persistent doubts.

4) The Brussels Manifesto also looked at the legislation governing the election of members of *the Brussels Regional Parliament*. This legislation forces all candidates to choose a linguistic identity¹⁷. It consequently prevents the emergence of bilingual regional parties. When this constraint is examined at face value, it can effectively be deemed regrettable. It is all the more so in that the socio-linguistic surveys conducted by our colleague at the Flemish-speaking Brussels Free University VUB Rudi Janssens show that a majority of Brussels dwellers would like to have bilingual electoral lists. However, before condemning this rule, we must understand its legal rationality and historical and political justifications. It is actually closely linked to the scheme instated to protect the Flemish minority within Brussels's regional institutions.

To provide this protection, the Special Act of 12 January 1989 stipulated that all of Brussels's MPs would be split up into French and Dutch linguistic groups. The Special Act of 13 July 2001 even resorted to the notion of quotas to protect the Flemish minority, which, without this, oscillated between 9 and 11 MPs of the total of 75 in the Brussels Parliament. Since this Special Act of 2001, the Flemings of Brussels are guaranteed representation by 17 MPs of the total of 89 that make up the current regional parliament¹⁸. The concern – the legitimacy of which is difficult to contest – to balance the make-up of Brussels's executive authority also results from this division of Brussels's residents into two linguistic categories¹⁹.

The Flemish political parties are strongly attached to this scheme because they remember the election of the first Greater Brussels Council following the 1970 constitutional revision that led to the appointment of councilpeople whom they disavowed as being "fake Flemings". Jeroen Van Nieuwenhove clearly referred to this memory when he opined that prohibiting bilingual electoral lists might be regrettable but was probably the price to pay to defuse the mutual distrust that characterises relations between French-speaking and Flemish politicians.

The question is then whether it is possible to abandon the constraint that the Brussels Manifesto criticises whilst giving the Flemish minority the protection to which it is entitled in the context of mistrust that the speakers recalled. We must admit that

¹⁶ See the aforementioned document of the Brussels Government, pp. 1-6 and 8. Structural refinancing of the federal scientific and cultural establishments that are overseen by the State and refinancing of the Community Commissions are also requested. We know how alarming the position of the French-speaking Community Commission in particular is.

¹⁷ See indeed Art. 17 of the Special Act of 12 January 1989.

¹⁸ See Art. 20(§2 of the Special Act of 12 January 1989.

¹⁹ See Art. 34 and 41 of the Special Act of 12 January 1989.

the Brussels Manifesto remains silent on this point and Alain Maskens's suggestions are problematic at the very least. Maskens effectively called for external guarantees that would require the federal government's intervention. Now, is it not contradictory to plead for stepped up Brussels regional authority whilst replacing the existing guarantees that respect this autonomy with alternative guarantees that could only threaten it? In my opinion, the protection that is procured by the existence of the two separate linguistic groups should be maintained but accompanied by the freedom to submit bilingual electoral lists. It would be technically possible to combine these two options.

5) The fifth and last proposal made by the Brussels Manifesto that I should like to pinpoint and comment upon more amply in these conclusions is without a doubt one of the most revealing of its signatories' plans. It is the proposal advocating the transfer of the cultural, educational, and "personalisable" powers that are currently held by the French-speaking Community or French-speaking Community Commission (COCOF) of Brussels and the Flemish Community²⁰ to the Brussels Region in order to have the latter coincide with a "Brussels Community". Alain Maskens did not, however, take this thinking to its logical conclusion. Doubtless aware of the objection mentioned in my first conclusion and keen as well to respect the share of legitimacy that is kept by each of the monolingual Communities, which can act in the same territory to meet the expectations of their respective "subjects", he did not recommend getting rid of the two major entities, the Flemish and French-speaking Communities, purely and simply. Instead, he wanted their powers to be reduced to managing cultural subject matters only, and even more specifically, those that are linked specifically to the French or Dutch language.

This proposal is based for the most part on two justifications. The first one consists in underlining the close ties between subject matters that are currently categorised as regional and thus come under the jurisdiction of the Brussels Region, on the one hand, and the so-called "Community" powers that are exercised separately by the French-speaking Community or COCOF and the Flemish Community, on the other hand. Close links undeniably do exist, especially in Brussels, between education (which is entrusted to the two Communities), vocational training (a cultural subject matter entrusted to the Flemish Community and COCOF), receiving and integrating immigrants (a personalisable subject matter for which the Flemish Community and COCOF are responsible), and job placement for the unemployed (a regional subject matter). According to Alain Maskens, all of these subject matters should be concentrated in the same hand, i.e., the "regionalist hand", which is the only one that can carry out a consistent political project beyond the language divide. I shall come back to this remark in a moment.

The second justification supporting this same recommendation stems from the existence of a bilingual Brussels culture founded ultimately on Brabant Province's ancestral history. The Brussels Region should be able to make use of this by receiving

²⁰ The Flemish Community Commission (VGC) does not have the power to make decrees in areas of Community jurisdiction. Only the COCOF has received this power, as the VGC did not wish to lose a portion of its powers, as the French-speaking Community did to the benefit of the Walloon Region and COCOF for the reasons enumerated in H. Dumont, "La dualité Communauté française – Région wallonne : sens ou non-sens ?", in *Administration publique*, 1994, pp. 247ff.

the power to do so. Here Alain Maskens criticised the conception of things subtending the Belgian Constitution that links culture very closely to language. Nicolas Lagasse, on the contrary, defends this conception. Where Alain Maskens sees a bilingual Brussels culture that the Brussels institutional scheme allegedly overlooks, to its great error, Nicolas Lagasse sees a meeting space between two cultural communities (in the strong sense of societal cultures discussed by the Canadian philosopher of multiculturalism Will Kymlicka) that this same Brussels institutional scheme allegedly structures, to its great merit.

In my opinion, it is neither advisable nor possible to settle this controversy in one swift stroke. The links between culture and language are as undeniable as the possibility of anchoring elements of cultural identity to extralinguistic factors. What is important, in institutional terms, is being able to have the right instruments in Brussels to meet the requests for support from both French-speaking and Flemish single-community institutions and truly bilingual two-community institutions. It would be vain to deny it. The political and cultural reality of Brussels includes balances of power and mistrust between an increasingly multicultural strong majority that uses French as its lingua franca and a Flemish minority that needs a padded network of schools, cultural centres, libraries, daycare centres, and other monolingual socio-cultural institutions to withstand the Frenchifying wave. However, this reality should not discourage all those who wish to overcome the linguistic divide by means of truly bicultural initiatives, and that is where progress must be made. Nicolas Lagasse clearly mentioned the particularly narrow limits within which the two-community endeavours that the relevant institutions have effectively initiated in Brussels are working, i.e., bicultural and bi-educational legislation in the case of the State and bipersonalisable legislation and organising or subsidiary powers for all bicomunity subject matters other than language use in the case of the Joint Community Commission (COCOM). The State and COCOM's failings are manifest, and the linchpins of the Brussels Manifesto must be congratulated for having organised their public denunciation. Still, what can be done to correct them?

To tell the truth, I am not convinced by the path that Alain Maskens advocates when he says that a fair and democratic plan for society requires a single government authority to be in charge, in this case a regional one. In taking this tack, he is connecting up, to a certain extent, with the old nationalist fantasy of searching for congruence between one territory, one culture, and one authority, although I am sure he has done so completely unconsciously. Now, we are doomed to a certain dose of complexity if we want to conserve a region in which the Flemish conserve the achievements that were included in the remarkable compromise of 1988-89 and the French-speakers remain united with the Walloons in some essential areas. Some simplification is obviously desirable and possible, notably through the transformation of a few community subject matters into regional ones, but a unilateral simplification that sacrifices most of the chains of solidarity between communities on the altar of regionalisation raised to the level of dogma is neither a realistic nor a promising avenue to my mind.

On the other hand, we can follow the good reform suggestions that Nicolas Lagasse defends to officialise and thus encourage the bi- and multicultural activities that each of the two communities (the French-speaking and Flemish Communities)

support de facto despite the constitutional prohibition of such action²¹. Let me add and stress that the Brussels Region should also be given powers in the bicultural and bi-educational subject matters of regional and local interest. This would enable it to step advantageously into the breach that the State has left, in practice, today²². Let us also abolish the Joint Community Commission and its paralysing system of joint oversight by ministers belonging to different linguistic groups in the area of bi-personalisable subject matters and entrust the latter's management to the Brussels Region's bodies, as the Brussels Government itself has just proposed²³.

As for the rest, each of the cultural, educational, and personalisable subject matters entrusted to the French-speaking Community or transferred by the latter to the Walloon Region and COCOF would have to be examined. A fairly objective review of the ways that these various subject matters have been managed up to now is the only way to draw a conclusion as to the opportuneness of keeping them at the level of power where they are currently housed, sending them back into the lap of the French-speaking Community, or rallying the Flemish partners to the idea of turning them into regional subject matters. I do not believe in the wisdom of a purely ideological approach that would decree that all these subject matters must be regionalised – that is the so-called “regionalist” point of view – or those that were transferred in 1993 must come under community jurisdiction once again – that is the so-called “communitarian” point of view defended in our debate by Nicolas Lagasse – or even that a whole bloc, such as all personalisable subject matters taken together, must be regionalised, whereas cultural and educational subject matters should remain under the jurisdiction of the French-speaking Community, if necessary rechristened “Wallonia-Brussels Authority” – that is the attempt at a compromise made by fellow constitutional lawyer Marc Uyttendaele. The “regionalists” and “communitarians” must engage in a serene dialogue not only within the Wallonia-Brussels Commission but with the Flemish residents of Brussels and Flanders as well, using arguments that allow for the singular aspects of each of the subject matters under consideration, rather than being guided by prejudices. However, there is an imperative need for institutional simplification that has become indispensable, given the complexity of the current tangle of institutional strands. It does indeed seem that the best way to achieve this would be to abolish the COCOF as a federated political entity with powers to adopt decrees in the community subject matters that were transferred to the Walloon Region and COCOF in 1993. These subject matters could be either recommunitarised for the benefit of the French-speaking Community (but this proposal would obviously require the Walloons' consent) or regionalised so that the Brussels and Flemish Regions would become competent to settle them in their respective jurisdictions (this, need it be said, would require the consent of the Flemings, whose Community would lose the power to manage such subject matters through decrees that are enforceable in the Flemish Region and Flemish institutions

²¹ The criterion of organisation must replace that of activity in Article 127(2) of the Constitution.

²² See H. DUMONT and L. VANCRAVEBECK, “L'exercice des compétences communautaires à Bruxelles”, in *CDPK, Chroniques de droit public – Publiekrechtelijke Kronieken* (in press).

²³ See the above-mentioned document, pp. 5-6.

of Brussels without distinction)²⁴. The COCOF would then conserve only the powers of a decentralised entity accountable to the French-speaking Community, as has always been and continues to be the case of the Flemish Community Commission (VGC).

Pending an in-depth case-by-case examination, for which we call with all our might, it thus is not possible to give here the complete list of community subject matters that could be regionalised or those currently entrusted to the COCOF that would benefit from being returned to the French-speaking Community. I shall thus limit my remarks to a few thoughts. Besides the regionalisation of tourism and sports infrastructure that has already been demanded, and quite rightly so, by the Brussels government, let me simply point out that there would be, for example, some good reasons to argue, along with the Brussels Manifesto's authors, in favour of regionalising occupational training (a cultural subject matter) as well as the reception and integration of immigrants (a personalisable subject matter). However, we cannot hide the loss of autonomy that such transfers would entail for the French-speakers and Flemish alike, who would then be forced to reach common understandings on these essential matters whereas they currently manage them completely independently. That does not mean that the possibility must be ruled out, but simply that all its implications must be weighed carefully before a decision is taken. Care must be taken not to get stuck in the paralysis that the logic of mutual veto powers would induce in the name of an apparent increase in efficiency and consistency.

When it comes to education, instituting a bilingual school system in Brussels would be a good idea in my view²⁵. The Brussels Region could be given this power, provided that it wielded it in cooperation with the French-speaking and Flemish Communities, which have built up considerable legitimacy and expertise in the area that it would be counterproductive to overlook. However, these same Communities must not be divested for all that of the right to organise and subsidise education built around their respective languages²⁶. As for cultural areas, I have already said how desirable it would be to see authentically bicultural activities welcomed more gener-

²⁴ The Walloon Region, for its part, would then be responsible for these matters across its entire territory, whereas it currently has jurisdiction over them in the French-speaking region only by virtue of Article 138 of the Constitution. To maintain the *status quo* in this connection and not strip the German-speaking Community of its powers, the Walloon Region would have to transfer its powers in this matters regarding the German-speaking region to the German-speaking Community, which it could do without problems by virtue of Article 139 of the Constitution.

²⁵ We shall not, however, be so naive as to consider this a magic wand that, with one wave, would correct all the – in many respects dramatic – flaws that plague the school system in Brussels. These flaws are explained by factors other than the current rules for splitting powers between the Communities and Regions.

²⁶ Here I share the concern expressed by Jeroen Van Nieuwenhove, who does not want a network of bilingual schools in Brussels to lead to a drop in the quality of the city's monolingual schools or financial divestment of the Communities in these schools. As for Nicolas Lagasse's preference for using language immersion techniques more often, I could rally to it only in the event of the proven failure of the more ambitious idea of bilingual Brussels schools organised by a bilingual authority. However, realism forces me to recognise that this failure is probable, if it is not already an established outcome, given the hostility with which Flemish political circles have already reacted to the idea.

ously in Brussels. This would require regionalising the bicultural sector of regional and local interest. Yet once again, this should in no way be done to the detriment of the French-speaking and Flemish Communities' rights to support their respective cultures actively and, moreover, non-exclusively.

Supposing that it is deemed acceptable by the Flemish side *quod non*, the pure and simple regionalisation of culture would strike a lethal blow to the Brussels-Walloon solidarity that is politically and economically vital for the future, whether this future unfolds within a Belgian federal framework or not. The "regionalists" invariably counter that it will be possible to maintain this solidarity through cooperation agreements. However, this response is not satisfactory when one is aware of the fragility of this technique, for an agreement is reached and changed by a unanimous vote. It is thus vulnerable to the veto or, more simply, inertia of each of the contracting parties. The experience of intra-francophone cooperative federalism since the 1993 Saint Quentin agreements unfortunately proves this²⁷, as Nicolas Lagasse reminded us. A united institution is much stronger than a juxtaposition of agreements. That makes all the difference between federalism and confederalism.

Let me conclude by gathering all of our suggestions together and taking a last glance at the Brussels Manifesto. Our suggestions: Subject to the contributions of the coming debates on the subject, it seemed recommendable to simplify and improve both the legitimacy and the efficiency of the Brussels institutional arrangement and necessarily the Walloon and Flemish ones as well by the following five reforms. First, eliminating the COCOM and replacing it by the Brussels Region, which would then have the power to adopt ordinances in bipersonalisable subject matters²⁸. Second, lifting the constitutional interdiction on the French-speaking and Flemish Communities' subsidising bi- and multicultural activities in Brussels²⁹. Third, transferring the power to legislate in bicultural subject matters of Brussels regional or local interest from the Federal State to the Brussels Region³⁰. Fourth, giving the Brussels Region the power to create a network of bilingual schools in consultation with the two Communities³¹. Fifth, eliminating the COCOF as a federated political entity with the power to issue decrees in the areas of Community jurisdiction that

²⁷ See R. BORN, "Bilan de l'exercice des compétences transférées par la Communauté française", *C.H. du CRISP*, 2002, Issue 1783-1784.

²⁸ This reform entails the revision of Articles 39 and 135 of the Constitution and the Special Act of 12 January 1989 on Brussels's institutions.

²⁹ This reform entails the revision of Article 127 of the Constitution.

³⁰ This reform also entails the revision of Articles 39 and 127 of the Constitution and the Special Act of 12 January 1989. As a result, the financing of bicultural activities of regional or local interest in Brussels would become a concurrent jurisdiction in which each of the two Communities, as well as the Brussels Region, could act. A rule to settle legal conflicts would have to be foreseen. Let me specify that the Federal State, for its part, would keep the bicultural sector of national interest (such as the royal opera house and Brussels's Fine Arts Centre), and federal scientific and cultural establishments, pursuant to an explicit clause that would have to be included for this purpose in the Constitution. Joint community governance of these subject matters, as recommended by the Flemish Parliament's resolutions of 3 March 1999, would lead straight to blockages and immobility.

³¹ This reform entails the revision of Articles 39 and 127 of the Constitution and this same special law.

were transferred to the Walloon Region and itself in 1993. These subject matters would all be returned to the jurisdiction of the French-speaking Community or else regionalised³².

Finally, let's glance one last time at the Brussels Manifesto. At the end of our exchanges on March 19 I was struck by the following paradox: The Brussels Manifesto claims to be rooted in a bilingual Brussels culture that should hypothetically show itself to be particularly understanding of the Flemish point of view. However, it basically piles on proposals that are strongly opposed to this point of view, to wit: enlargement of the Brussels Region, elimination of monolingual electoral lists, elimination of the guarantees ensuring the existence of a Dutch language group in the Brussels Parliament, and elimination of the Flemish Community Commission despite the invaluable role that it is known to have played in filling the gap left by the Brussels boroughs' lack of zeal³³. Moreover, the Brussels Manifesto is largely insensitive to the ties that unite the French-speakers of Brussels, who undeniably make up the majority of Brussels's population, and Walloons.

I have taken the liberty here not only of summarising the positions that we heard in the course of the colloquium, but also of giving a more personal, albeit backed up by arguments, point of view that in the final analysis consists in straining the Brussels Manifesto's ideas through the filter of realism and institutional consistency of someone who believes that it is neither possible nor desirable to cut to the quick of the Community/Regional dilemma whilst being convinced that the status quo is not tenable, either. Some of the reforms proposed by the manifesto come out of this filtration intact, even strengthened. Others are suggested. Still others – a large number, it is true – come up against relatively strong objections. I have no doubt that they will in turn give rise to further reactions. We are clearly very lucky that this is the case. In the final analysis, each citizen and each group should ideally conduct this type of deeply democratic exercise. Large fractions of Belgium's civil society have tended much too much to suffer the institutional reforms that have piled up over the past thirty-eight years. It is high time that they make them their own again.

The most embarrassing difficulty thwarting this salutary undertaking today lies in the existential crisis that is undermining the very Federal State. Must reforms that assume the maintenance of this State be designed, or must they allow for the latter's coming evaporation, if not dissolution? Whether they want it or not, French-speakers and Flemish, those who, like Alain Maskens, refuse this linguistic split and those who accommodate or defend it, and Brussels dwellers and non-Brussels dwellers alike must constantly keep the two possible scenarios in mind. The other difficulty lies obviously in the great complexity of our institutional construction set, the achievements of which we cannot attempt to modify without first understanding their whys and wherefores. However, we have no choice: If, as is fair, we want to subject our institutions to the requirements of legitimacy, efficiency, and simplicity,

³² This reform requires the abrogation of the transfer decrees adopted pursuant to Article 138 of the Constitution, revision of the special law on institutional reforms of 8 August 1980, and implementation of Article 139 of the Constitution to safeguard the German-speaking Community's powers.

³³ See E. WITTE, "Looking back on fifteen years of Flemish Community Commission Policy (1989-2004)", in *Brussels Studies*, 17, 7 April 2008.

we shall have to wade in, take apart all the mechanisms, link the institutional questions to the economic, social, and cultural stakes riding on them, and listen to each other with respect. The thrilling debate that Brussels Studies organised on 19 March 2008 around the ideas of the Brussels Manifesto has certainly made a remarkable contribution in this regard.